

REMARKS

Claims 27-51 are pending in this application. The Examiner is correct in his assumption that Claims 1-8 and Claims 9-26 were cancelled in the Office Action of September 29, 2009.

Examiner has issued a restriction requirement in his January 14, 2010 Office Action alleging that Claims 27-32 (Group I) and Claims 46-51 (Group II) are directed to patentably distinct species. The restriction requirement is traversed for the reasons set forth below. The Applicants presume that the Examiner intended to indicate claims 33-45 in Group I. Nevertheless, the Applicants provisionally elect apparatus claims 27-45 of a “sharp instrument and sheath” for prosecution and reserve the right to file a divisional application directed to the non-elected method claims 46-51 identified as “method of preventing re-use and re-sheathing”.

RESPONSE TO RESTRICTION

The Applicants traverse the Restriction Requirement for the reason set forth below. The Applicants assume that the Examiner inadvertently failed to include Claims 33-45 in Group I drawn to the apparatus. Therefore, Applicant hereby provisionally elects embodiments of the invention in Claims 27-45. The Office Action indicated that the inventions claimed in Claims 27-32 and Claims 46-51 are directed to patentably distinct species. Specifically the Examiner has requested that Applicant elect one of the following inventions for further examination:

- I. Claims 27-32, drawn to a sharp instrument and sheath classified in class 604, subclass 93.01; or
- II. Claims 46-51, drawn to method of preventing re-use and re-sheathing, classified in class 604, subclass 110.

The restriction requirement should be rescinded for the following reasons. The invention as disclosed and claimed in independent apparatus Claim 27 cannot be used to perform a materially different method of operation than the method recited in Claims 46-51 (Group II). That is, the claimed device cannot be used in a materially different method than that now

claimed in Claims 45-51 and vice versa. Furthermore the method of Claims 45-51, having substantially all the limitations of the claimed device of Claim 27, cannot be performed with a materially different device than that recited in Claim 27. Specifically, the method of preventing more than a single use of a sharp instrument without a reset of an accompanying safety guide requires the limitations of sharp instrument and sheath as claimed.

In view of the above, the restriction requirement must be rescinded, and the application substantively examined. If there are any questions regarding this application, or any matters that may be handled by telephone conference, the Examiner is kindly invited to telephone the undersigned.

Respectfully submitted,

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